

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58

**OPPOSITION TO PETITION FOR RECONSIDERATION
OF HUGHES NETWORK SYSTEMS, LLC**



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I. INTRODUCTION AND SUMMARY

Pursuant to Section 1.429(f) of the Commission's rules,¹ the American Cable Association ("ACA")² hereby submits its opposition to the Petition for Reconsideration of Hughes Network Systems, LLC ("Hughes") in the above-referenced proceedings.³ Hughes seeks reconsideration of the Commission's March 2, 2017 Order,⁴ which adopted a weighting methodology to compare bids among the service performance and latency tiers for the Connect America Fund Phase II

¹ 47 C.F.R. § 1.429(f).

² ACA represents approximately 750 smaller cable operators and other local providers of broadband Internet access, voice, and video programming services to residential and commercial customers. These providers pass approximately 19 million households of which 7 million are served. Many of these providers offer service in rural communities and more remote areas.

³ *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Petition for Reconsideration of Hughes Network Systems, LLC (filed Apr. 20, 2017) ("Hughes Petition").

⁴ *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Order on Reconsideration, 32 FCC Rcd 1642 (2017) ("Order").

(“Phase II”) bidding process (“auction”).⁵ The methodology weights bids for the four performance tiers (Minimum, Baseline, Above Baseline, and Gigabit) and two latency tiers (Low Latency and High Latency), with higher speeds, higher data usage allowances, and lower latencies preferred.⁶ The Commission concluded that its methodology, while not perfect, best served its objective “to maximize the value the American people will receive for the universal service dollars we spend, balancing higher-quality services with cost efficiencies.”⁷

Hughes argues that the weighting methodology unfairly advantages high-speed and low-latency bids, particularly from fiber broadband providers, over bids for comparatively lower-speed, higher-latency services, such as those offered by satellite broadband providers.⁸ Hughes alleges that the weights will severely limit satellite broadband provider participation in the Phase II auction and hamper overall competition for support across broadband platforms.⁹ Hughes asks the Commission to overhaul the methodology to reduce the weight increments between performance tiers, minimizing the advantage given to high-performance services, and cut the penalty for high-latency services by more than half.¹⁰

The Commission should not grant reconsideration. First, by unnecessarily delaying the Phase II auction, reconsideration will disserve consumers in the relevant unserved areas who have already waited far too long to receive broadband service. Second, although ACA does not

⁵ The Commission adopted the performance and latency tiers in 2016. *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5953-63, paras. 8-37, (2016) (“2016 Order and FNPRM”).

⁶ Order, 32 FCC Rcd at 1628, para. 17 (establishing weights of 65 for Minimum tier performance, 45 for Baseline tier performance, 15 for Above Baseline tier performance, and 0 for Gigabit tier performance, as well as weights of 25 for High Latency service and 0 for Low latency service).

⁷ *Id.* at 1624, para. 1.

⁸ Hughes Petition at 1.

⁹ *Id.* at 3.

¹⁰ *Id.* at 2 (recommending weights of 25 for Minimum tier performance, 15 for Baseline tier performance, 10 for Above Baseline tier performance, and 0 for Gigabit tier performance, as well as weights of 10 for High Latency service and 0 for Low Latency service).

agree with every aspect of the weighting methodology, the Commission's methodology is far superior to the methodology Hughes proposes in its petition, which will lead to the deployment of low-speed, high latency services that cannot meet current consumer demand. Finally, Hughes fails to meet the standard for Commission reconsideration by not identifying any material error or omission in the Order or raising any facts not known or not existing until after its last opportunity to respond.

II. THE COMMISSION SHOULD NOT GRANT RECONSIDERATION

A. Reconsideration Will Only Further Delay Long-Overdue Action on Phase II and Widen the “Digital Divide”

Hughes asks the Commission to further delay action on the Phase II auction and rework the methodology to reduce the weights ascribed to its service. But the launch of the Phase II auction already is long overdue.¹¹ When it created the Connect America Fund (“CAF”) in 2011 as part of the USF/ICC Transformation Order, the Commission planned to start the Phase II auction in 2012, with support disbursements to winning bidders continuing through 2017.¹² As Chairman Pai acknowledged in the Order, “[n]eedless to say, the Commission fell behind schedule.”¹³ Indeed, the release of the Order already exceeded both the “best case” and

¹¹ See Order, 32 FCC Rcd at 1665 (Statement of Chairman Ajit Pai) (noting the Commission launched the CAF in 2011); 2016 Order and FNPRM, 31 FCC Rcd at 6106 (Statement of Commissioner Mignon L. Clyburn) (stating rural communities have demanded expanded broadband access for nearly seven years), 6111 (Statement of Commissioner Michael O’Rielly) (remarking on the “long road” the Commission took to issue proposed rules for the Phase II auction).

¹² *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17673-74, paras. 23, 25 (2011) (“USF/ICC Transformation Order”).

¹³ Order, 32 FCC Rcd at 1665 (Statement of Chairman Ajit Pai).

“realistic” timeframes for action proposed by Commissioner O’Rielly.¹⁴ The release of the Public Notice announcing the Phase II auction will similarly fail to meet the proposed timeframes.¹⁵

The near-finalization of the Phase II auction has been years in the making. Over five years have passed since the Commission first sought and received comment on the procedures that should govern the Phase II application and auction process.¹⁶ Over three years have passed since the Commission adopted rules regarding Phase II auction participation and the term of support for successful bidders.¹⁷ Over two years have passed since the Commission began its rural broadband experiments to test various aspects of the auction¹⁸ and since it awarded the model-based Phase II support to price cap carriers.¹⁹ The Commission has known for nearly two years which carriers accepted such support and the unserved rural communities where support was declined.²⁰ Finally, nearly a year has passed since the Commission

¹⁴ Commissioner Michael O’Rielly, “USF High-Cost Program: Best and Realistic Timelines,” FCC Blog (Mar. 24, 2015), available at <https://www.fcc.gov/news-events/blog/2015/03/24/usf-high-cost-program-best-and-realistic-timelines> (setting a “best case” timeframe of third quarter 2015 and a “realistic” timeframe of third quarter 2016).

¹⁵ *Id.* (setting a “best case” timeframe of second quarter 2016 and a “realistic” timeframe of first quarter 2017). See *id.* (“[T]here hasn’t been a sense of urgency at the Commission due to a lack of energy and commitment to complete the hard tasks that remain. Sadly, unless something significant changes, unserved Americans will have to wait even longer to get access to broadband.”).

¹⁶ USF/ICC Transformation Order, 26 FCC Rcd at 18089-91, paras. 1208-19 (seeking comment by February 17, 2012).

¹⁷ *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, 7060-66, paras. 29-47 (2014) (“Seventh Order on Reconsideration”).

¹⁸ *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8770, para. 1 (2014).

¹⁹ *Wireline Competition Bureau Announces Connect America Fund Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 3905 (WCB 2015).

²⁰ *Carriers Accept Over \$1.5 Billion in Annual Support from Connect America Fund to Expand and Support Broadband for Nearly 7.3 Million Rural Consumers in 45 States and One Territory*, FCC Press Release (Aug. 27, 2015), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-335082A1.pdf.

established the Phase II auction framework and budget, along with the public interest obligations, eligibility requirements, and oversight rules for participants.²¹

After nearly six years, seven reconsideration orders,²² and one federal court challenge,²³ ACA submits that consumers in yet to be served areas have waited long enough.²⁴ The Commission should heed the Chairman's pledge that commencing the Phase II auction "as soon as possible is a top priority for the Commission"²⁵ and deliver on the USF/ICC Transformation Order's promise of "expand[ing] broadband availability to millions more unserved Americans" through the Phase II auction.²⁶ Congress continues to prod the

²¹ 2016 Order and FNPRM, 31 FCC Rcd at 5950-51, paras. 1-2.

²² See, e.g., Seventh Order on Reconsideration, 29 FCC Rcd at 7059-66, paras. 28-44.

²³ *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

²⁴ See Remarks of FCC Commissioner Ajit Pai, "A Digital Empowerment Agenda," Cincinnati, Ohio (Sept. 13, 2016) (stating that almost 34 million Americans lack access to the broadband networks needed to fully participate in the digital economy). Commission data show that more than 39 percent of rural Americans lack access to Baseline tier broadband service, compared to only 4 percent of Americans living in urban areas, and 25 percent of rural Americans lack access to even Minimum tier broadband service, compared to only 2 percent of their urban counterparts. *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended*, GN Docket No. 15-191, 2016 Broadband Progress Report, 31 FCC Rcd 699, 731-32, para. 79, and Table 1 (2016).

²⁵ Chairman Ajit Pai Announces Formation of the Rural Broadband Auctions Task Force, Press Release (Apr. 3, 2017), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-344201A1.pdf. The need for reliable, high-performance broadband continues to grow. See "2016 Measuring Broadband America Fixed Broadband Report, A Report on Consumer Fixed Broadband Performance in the United States," FCC (Dec. 1, 2016), available at https://www.fcc.gov/reports-research/reports/measuring-broadband-america/measuring-fixed-broadband-report-2016#_Toc464398833 ("2016 Broadband Report"). Today's consumers access vast amounts of content, applications, and data online, driven largely by consumption of bandwidth-intensive video applications through multiple Internet-enabled devices. *Ex Parte* Filing of the American Cable Association on the Connect America Fund, WC Docket No. 10-90, at 3 (Jan. 30, 2017) ("ACA January 30 *Ex Parte*"). North American households already use an average of seven connected devices daily and the number of IoT devices in residential homes totals over four billion. *Id.* at 4.

²⁶ USF/ICC Transformation Order, 26 FCC Rcd at 17673, para. 23. As Chairman Pai recently stated, "[d]eploying broadband is hard, expensive, and time-consuming work." Remarks of FCC Chairman Ajit Pai at the First Meeting of the Federal Communications Commission's Broadband Deployment Advisory Committee (Apr. 21, 2017), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0421/DOC-344513A1.pdf. Commissioner O'Rielly similarly recognized the "litany of obstacles that prevent all Americans from having access to sufficient broadband services," including difficult terrain and siting conflicts with local authorities. Remarks of FCC Commissioner Michael O'Rielly, Initial Meeting

Commission forward on rural broadband deployment, with a bipartisan group of 30 U.S. Senators recently urging the Commission to close the digital divide to bring the benefits of high-speed, reliable broadband to rural America²⁷ and with current legislation proposing billions for new broadband infrastructure in rural communities.²⁸ The time to take action on the Phase II auction is now and the Commission should not allow Hughes to further delay rural broadband deployment through reconsideration.

B. The Commission's Weighting Methodology is Superior to the Weighting Methodology Proposed by Hughes

Hughes claims that the Commission's weighting methodology, specifically the size of the weight increments between performance tiers and the penalty imposed on high-latency services, unfairly disadvantages satellite broadband providers.²⁹ Hughes is incorrect. While ACA does not agree with every aspect of the Order, the Commission's weighting methodology is superior to the methodology proposed by Hughes and correctly accounts for both current and future consumer demand for reliable, high-speed broadband service.

of the Broadband Deployment Advisory Committee (Apr. 21, 2017), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0421/DOC-344519A1.pdf. Commissioner Clyburn has noted, "[f]or consumers in the digital darkness, every day is another full of denied opportunities." 2016 Order and FNPRM, 31 FCC Rcd at 6106 (Statement of Commissioner Mignon L. Clyburn). For this reason alone, the Commission should not grant the Hughes petition.

²⁷ Letter from Roger F. Wicker, U.S. Senator, *et al.*, to the Honorable Ajit Pai, Chairman, FCC, at 1 (Feb. 2, 2017), available at https://www.wicker.senate.gov/public/_cache/files/cd49d2de-4940-4512-888a-2cc13835d309/senate-mobility-fund-phase-ii-letter.pdf. See Letter from John Thune, U.S. Senator, *et al.*, to the Honorable Thomas Wheeler, Chairman, FCC, at 2 (May 11, 2015), available at https://www.commerce.senate.gov/public/_cache/files/15daff5b-4d50-4d14-a17d-85647f3ff97a/5F944C3A243A8E0A0C87755E172D99C5.thune-klobuchar-standalone-rural-bb-2015-3-.pdf (stating that the FCC "must ensure that rural consumers are not left behind" as it modernizes universal service support for broadband deployment).

²⁸ See New Deal Rural Broadband Act of 2017, H.R. 800, 115th Congress (2017), available at <https://www.congress.gov/bill/115th-congress/house-bill/800>.

²⁹ Hughes Petition at 1.

As ACA stated in its comments, the Commission's effort to develop a weighting methodology "is not only novel but challenging."³⁰ Throughout this proceeding, ACA recommended that the Commission's key objective should be to maximize participation in the Phase II auction by all broadband providers, regardless of underlying technology.³¹ ACA submitted a robust technical analysis to the Commission that examined the clustering of weighted cost-effectiveness ratios for all bids in all eligible areas.³² ACA also offered a weighting methodology designed to maximize participation by broadband providers across platforms.³³ Other parties submitted proposed methodologies and evidence to support their proposals.³⁴ Hughes too submitted its proposed methodology, but offered scant support.³⁵ In the end, the Commission chose not to adopt the specific weighting methodology advocated by any of the commenters in the Order. But while ACA continues to believe that its proposal will distribute funding most cost effectively, the Commission's weighting methodology, which was "designed to strike an appropriate balance between broadband performance and cost-

³⁰ *Connect America Fund; ETC Annual Reports and Certifications; Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-58, 14-259, Reply Comments of the American Cable Association, at 1 (Aug. 5, 2016) ("ACA Reply Comments"). See ACA Comments at 2-3 (stating "ACA appreciates the difficulty of that task").

³¹ See, e.g., *Ex Parte* Filing of the American Cable Association on the Connect America Fund, WC Docket No. 10-90, at 1 (Jan. 12, 2017); *Ex Parte* Filing of the American Cable Association on the Connect America Fund, WC Docket No. 10-90, at 2 (Feb. 6, 2017) ("ACA February 6 *Ex Parte*"); *Ex Parte* Filing of the American Cable Association on the Connect America Fund, WC Docket No. 10-90, at 1-2 (Feb. 15, 2017); *Ex Parte* Filing of the American Cable Association on the Connect America Fund, WC Docket No. 10-90, at 1 (Feb. 17, 2017) ("ACA February 17 *Ex Parte*").

³² See ACA February 17 *Ex Parte* (including analysis conducted by ACA's external consulting firm).

³³ *Id.* See ACA January 30 *Ex Parte* at 8-9.

³⁴ See e.g., Reply Comments of the United States Telecom Association, WC Docket No. 10-90 *et al.*, at 2-3 (Aug. 5, 2016); Letter from Stephen E. Coran, Counsel to the Wireless Internet Service Providers Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.* (Jan. 31, 2017); Letter from Rebekah P. Goodheart, Counsel to the Association of Missouri Electric Cooperatives, *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Feb. 14, 2017).

³⁵ ACA Reply Comments at 6 (citing Comments of Hughes Network Systems, LLC, WC Docket No. 10-90 *et al.*, at 4 (July 21, 2016)).

effectiveness,” is superior to Hughes’ proposed methodology, which will leave rural communities stranded with low-speed, high-latency services that cannot meet current consumer demands.

Unlike Hughes, the Commission carefully considered the issues raised by commenters regarding the proper weighting for performance tiers and latency. First, citing to multiple commenters, including Hughes, the Commission correctly determined that consumers value high-speed services and that reducing the weight increments between performance tiers “could deprive rural consumers of the high-speed, lower latency services that are common in urban areas.”³⁶ The Commission expressed concern that minimal weight increments “would likely result in bids in lower tiers prevailing, leaving all consumers with minimum service even though some service providers might be able to offer increased speeds for marginally more support.”³⁷ The Commission rightly decided not to construct the weighting methodology to favor the lowest cost, lowest performance bids. As ACA explained and the Commission referenced in the Order, market data and industry trends show that consumer broadband needs already exceed the Minimum and Baseline performance tiers.³⁸ Even assuming Minimum and Baseline tier services may be more cost-effective to deploy now, the Commission concluded based on evidence in the record that such networks will be more expensive in the long term because they will require constant upgrades.³⁹ In addition, the Commission recognized that “speeds that are

³⁶ Order, 32 FCC Rcd at 1631, para. 24.

³⁷ *Id.*

³⁸ Order, 32 FCC Rcd at 1632, para. 26 (citing ACA Comments at 3-4; ACA January 30 *Ex Parte* at 9). For example, the Commission’s most recent national broadband performance report demonstrated that the median consumer fixed broadband speed in the United States was 39 Mbps, indicating that more than half of consumers already subscribe to services that exceed the 25 Mbps Baseline speed. See 2016 Broadband Report.

³⁹ Order, 32 FCC Rcd at 1633, para. 26. Hughes submitted sample bid estimates to the Commission suggesting that satellite broadband service was a third of the cost of deploying fiber for the first time. See, e.g., Hughes Network Systems, LLC, Notice of Ex Parte Presentation – CAF Phase II Competitive Bidding, WC Docket No. 10-90 (filed Feb. 2, 2017). Hughes failed to provide any support for its particularly optimistic estimate of its service’s cost effectiveness.

reasonably comparable today may not be reasonably comparable throughout the 10-year support term” of CAF Phase II.⁴⁰ Hughes’ purported focus on “breadth of broadband coverage,” even if such coverage provides speeds far below those offered in urban areas, ignores the Commission’s statutory duty to support reasonably comparable services⁴¹ and threatens to relegate rural communities to a digital “second class.” By seeking to minimize the weight increments, Hughes’ proposed methodology disregards both current consumer needs and the future of broadband services. By contrast, the Commission’s weighting methodology properly incentivizes providers of higher-tiered services to participate in the Phase II auction⁴² and will promote high-speed, “future proof” broadband offerings that can be leveraged by entire communities.⁴³ The Commission therefore appropriately adopted meaningful weight increments between performance tiers and rejected Hughes’ recommendations.

Second, the Commission properly concluded that a significant weight should apply to high-latency services.⁴⁴ Of all available platforms eligible to participate in the Phase II auction, satellite is the only technology that suffers from high latency.⁴⁵ Although the Commission opened up the Phase II auction to participation from satellite providers to maximize competition, it also adopted objective latency standards “to ensure that consumers received an appropriate level of service.”⁴⁶ The Commission therefore recognized early on in this proceeding that

⁴⁰ Order, 32 FCC Rcd at 1633, para. 26.

⁴¹ 47 U.S.C. § 254(b)(3).

⁴² ACA February 6 *Ex Parte* at 3.

⁴³ Order, 32 FCC Rcd at 1633, para. 26; ACA January 30 *Ex Parte* at 9-10; ACA February 6 *Ex Parte* at 3.

⁴⁴ Order, 32 FCC Rcd at 1635-39, paras. 31-34.

⁴⁵ ACA January 30 *Ex Parte* at 10 n. 31.

⁴⁶ Order, 32 FCC Rcd at 1635, para 31.

satellite providers may not be able to provide the most cost-effective, high-performance broadband in certain areas.

In determining the appropriate weight to assign to high-latency services, the Commission discussed concerns raised by multiple commenters, including ACA, “about the inherent limitations of high latency services—particularly for interactive, real-time applications and voice services.”⁴⁷ As ACA explained, high-latency services cannot support today’s real-time applications, nor those of the future.⁴⁸ Only low-latency, high-performance services can reliably support real-time applications such as SMS, IM, VoIP, web-browsing, video conferencing (Skype, GotoMeeting), cloud storage (iCloud, Dropbox, Google Apps), and online gaming platforms or networks (Steam, Playstation Network).⁴⁹ Other commenters referenced by the Commission stated that satellite broadband reliability may be detrimentally impacted by rain, ice, snow, or solar events, and that consumers choosing to run a VPN client over satellite broadband may see their performance reduced by as much as 50-75 percent.⁵⁰

Despite the latency limitations of satellite broadband, Hughes’ proposed methodology cuts the weight penalty for high-latency services by half.⁵¹ Hughes argues that the cut is warranted because its consumer satisfaction data indicates that subscribers do not mind the inevitable latency resulting from data travel time to and from its satellites.⁵² At the outset, ACA notes that satellite broadband subscriptions lag far behind other platforms, representing less than 2 percent of total U.S. broadband subscriptions despite universal availability and with most

⁴⁷ *Id.* at 1638, para. 34.

⁴⁸ ACA January 30 *Ex Parte* at 10.

⁴⁹ *Id.* (citing 2016 Broadband Report). See ACA February 6 *Ex Parte* at 3 (“[H]igher latency greatly affects the quality of real-time applications.”).

⁵⁰ Order, 32 FCC Rcd at 1638, para. 34 n. 84 (citing comments submitted by USTelecom and Southern Tier).

⁵¹ Hughes Petition at 2.

⁵² *Id.* at 9.

satellite broadband subscribers located in areas where no wireline broadband alternative exists.⁵³ In addition, the Commission rightly chose not to rely on consumer satisfaction data because a consumer's decision to subscribe to a particular service "may be based on numerous variables and does not suggest that one level of service should be valued by a particular percentage over another level of service in areas where consumers currently have no options for service."⁵⁴ The fact that some consumers are satisfied with satellite broadband service does not mean the Commission cannot craft a weighting methodology promoting higher-tier services in rural areas. Hughes' weighting methodology would leave rural communities without access to today's real-time applications and subject to the performance variability inherent in satellite broadband service. In order to preserve rural access to broadband services reasonably comparable to those offered in urban areas, the Commission properly concluded that high-latency services should receive a significant penalty.

Hughes asserts that the high-latency weight, combined with the penalties imposed on low-performance services, effectively prevents it from submitting competitive bids under certain conditions.⁵⁵ But the fact that Hughes will not be successful in every instance reflects the Commission's determination to award Phase II support through an auction, "not simply a procurement process."⁵⁶ If Hughes is concerned about its success during the Phase II auction, its solution should be to improve the cost-effectiveness of its bids, not to get the Commission to revamp the weighting methodology to favor its service.⁵⁷

⁵³ ACA January 30 *Ex Parte* at 10 n. 31.

⁵⁴ Order, 32 FCC Rcd at 1634, 1638-39, paras. 28, 34.

⁵⁵ Hughes Petition at 3-5.

⁵⁶ Order, 32 FCC Rcd at 1629, para. 21.

⁵⁷ See *id.* at 1637, para. 32 (leaving it to service providers to "determine how they are best able to place a competitive bid").

C. Hughes Failed to Meet the Commission's Reconsideration Standard

Even assuming *arguendo* that ACA agreed with Hughes that the Commission's weighting methodology needed revision, which it does not, Hughes fails to meet the standard for Commission reconsideration under Section 1.429 of the Commission's rules.⁵⁸ The Commission recently stated that reconsideration is appropriate "where the petitioner shows either a material error or omission in the original order or raises facts not known or not existing until after the petitioner's last opportunity to respond."⁵⁹ By contrast, if the Commission fully considered all "important arguments" in the proceeding to develop "a reasoned basis for its conclusion," reconsideration is unwarranted.⁶⁰

Hughes claims that the Commission's weighting methodology "lacks any justification in fact or policy."⁶¹ Hughes is wrong. It disregards the Commission's careful consideration of the important arguments in the record to develop a reasoned basis for the weighting methodology that does not warrant reconsideration. As noted in the Order, the Commission is entitled to substantial deference when engaging in regulatory "line-drawing" to develop reasonable solutions for complex issues.⁶² The Commission's weighting methodology therefore "need not

⁵⁸ 47 C.F.R. § 1.429.

⁵⁹ *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rules*, MB Docket No. 13-236, Order on Reconsideration, FCC 17-40, para. 16 (Apr. 21, 2017) ("UHF Discount Reconsideration Order"). See *Order*, 32 FCC Rcd at 1650, paras. 68-70 (granting reconsideration where petitioner demonstrated sufficient public interest benefits in overturning Commission's prior policy determinations).

⁶⁰ UHF Discount Reconsideration Order at para. 17.

⁶¹ Hughes Petition at 6.

⁶² Order, 32 FCC Rcd at 1633, para. 27 n. 57. See, e.g., *AT&T Corp. v. FCC*, 220 F.3d 607, 627 (D.C. Cir. 2000) (finding the Commission holds "wide discretion to determine where to draw administrative lines").

be drawn with mathematical precision.”⁶³ Instead, “[t]he relevant question is whether the agency’s numbers are within a zone of reasonableness.”⁶⁴

Hughes fails to demonstrate that the Commission committed a material error or omission in the Order. The Commission fully considered the arguments raised in the proceeding, including those offered by Hughes, when developing its weighting methodology.⁶⁵ For example, the Commission referenced Hughes’ comments and *ex parte* communications advocating for smaller weight increments between performance tiers before explicitly rejecting that approach in its methodology.⁶⁶ The Commission similarly cited to Hughes’ arguments in favor of a lower weight for high-latency services before determining that the inherent limitations of such offerings called for a significant penalty.⁶⁷ Moreover, Hughes raises no facts in its petition unknown to it or not existing until after its last opportunity to respond to the Commission.⁶⁸ Although Hughes repackages some of its earlier claims in its petition, that does not make such claims new or deserving of reconsideration. Even the White Paper purportedly created by Hughes in April 2017 and attached to its petition just summarizes the evolution of Hughes’ network to provide broadband service, information the company already possessed.⁶⁹ While Hughes may not agree with the Commission’s response to its arguments, these arguments received full and fair consideration in the Order. Allowing Hughes an opportunity to re-litigate its preferred weighting methodology will only further waste the Commission’s time and delay action on the Phase II

⁶³ *Alliance for Cmty. Media v. FCC*, 529 F.3d 763, 780 (6th Cir. 2008).

⁶⁴ *WorldCom, Inc. v. FCC*, 238 F.3d 449, 462 (D.C. Cir. 2001).

⁶⁵ ACA notes that the composition of the Commission that adopted the Order is the same as the current Commission. Consequently, the Commission is not being asked to reconsider the reasoning of its predecessor. *Compare* UHF Discount Reconsideration Order at para. 17 (finding prior Commission failed to fully consider all important arguments in the proceeding and lacked a reasoned basis for its decision).

⁶⁶ Order, 32 FCC Rcd at 1632, para. 25.

⁶⁷ *Id.* at 1638, para. 34.

⁶⁸ 47 C.F.R. § 1.429(b).

⁶⁹ Hughes Petition at Attachment.

auction. The Commission adopted a reasonable weighting methodology based on the record and its judgments should be afforded significant deference. By not identifying any material error or omission in the Order, or raising any facts not known or not existing until after its last opportunity to respond to the Commission, Hughes' petition fails to meet the standard for Commission reconsideration and should not be granted.

III. CONCLUSION

For the foregoing reasons, ACA opposes the Petition for Reconsideration filed by Hughes and requests that the Commission not grant reconsideration of the Phase II weighting methodology adopted in the Order.

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May 18, 2017

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2017, a true and correct copy of the foregoing Opposition to Petition for Reconsideration of Hughes Network Systems, LLC was provided via first class U.S. mail to:

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_____/s/____

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